

#22
RECEIVED
CENTRAL FAX CENTER

MAR 25 2008

S/N 09/785,791

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	GOLDSTEIN et al.	Examiner:	Shawn S. An
Serial No.:	09/785,791	Group Art Unit:	2613
Filed:	February 16, 2001	Docket No.:	12808.0012USII
Title:	OPTICAL DEVICE		

CERTIFICATE UNDER 37 CFR 1.6(d): The undersigned hereby certifies that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on March 25, 2008.

By: 
Name: Karen R. Nejedly

RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

JUN 25 2008

OFFICE OF PETITIONS

Dear Sir:

Applicants have read and considered the Decision on Petition dated January 25, 2008. The Petition was dismissed. Applicants have included the facts, statements and assertions from the original Petition as well as the portions satisfying the requirements raised in the Decision on Petition. Applicants assert that the Renewed Petition satisfies all requirements and should be granted.

U.S. Patent Application Serial No. 09/785,791
Renewed Petition Under 37 C.F.R. § 1.137(b)

The above-identified application became abandoned for failure to file a timely and proper reply to an Office Action by the United States Patent and Trademark Office. Applicants hereby petition for revival of this unintentionally abandoned application and enclose a response believed to put the application in condition for allowance as required under 37 C.F.R. § 1.137(b). Please charge any necessary fees for a small entity to Deposit Account No. 13-2725.

The United States Patent and Trademark Office erroneously sent a Notice of Abandonment on March 24, 2004. However, a Notice of Appeal had been mailed on October 22, 2003, which was timely. The original Notice of Abandonment was sent when the application was still pending and the application had not gone abandoned.

Applicants responded to the erroneous Notice of Abandonment and a Petition to Withdraw the Notice of Abandonment was filed on November 8, 2004 and it was believed that the Petition maintained pendency.

A Decision on the Petition to Withdraw the Notice of Abandonment was issued on August 29, 2005. In the Decision, the Petition to Withdraw the Notice of Abandonment was denied. The Decision stated that although the original Notice of Abandonment was sent in error, the Request for Withdrawal of the Notice of Abandonment was not a sufficient and timely response and that the response period continued. Moreover, the Notice of Appeal was not sufficient to maintain pendency. The application had gone abandoned on April 22, 2004. A Notice of Abandonment reflecting this date was never sent.

Applicants first became aware that the application had actually gone abandoned when the Decision on Petition mailed August 29, 2005 was later received. Applicants had believed that the previous Notice of Abandonment was erroneous and were not informed of the subsequent abandonment until the Decision on Petition mailed August 29, 2005 had been received.

U.S. Patent Application Serial No. 09/785,791
Renewed Petition Under 37 C.F.R. § 1.137(b)

As a Notice of Abandonment reflecting the correct date of abandonment was never sent, and Applicants had filed a Request to Withdraw the premature Notice of Abandonment, Applicants were not informed of the actual abandonment until the Decision mailed on August 29, 2005 was received.

Applicants assert that delay was originally caused by an erroneously issued Notice of Abandonment and confusion over the proper response date in light of a pending Petition to Withdraw and lack of clarification provided until a subsequent Decision on the Petition was received.

The entire delay in filing the required reply from the due date for replying until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

The Decision on Petition mailed January 25, 2008 indicated that the Petition failed to satisfy requirement 3 under 1.137(b) as it did not include a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. The Decision stated that there are three periods to be considered during the evaluation of a petition under 37 C.F.R. § 1.137(b):

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application; and
- (3) the delay in filing a grantable petition pursuant to 37 C.F.R. § 1.137(b) to revive the application.

The Decision states that the delay for period (2) has not been shown to the satisfaction of the Director to be unintentional. The instant petition was filed eleven months after the decision

U.S. Patent Application Serial No. 09/785,791
Renewed Petition Under 37 C.F.R. § 1.137(b)

denying the petition to withdraw the holding of abandonment. Moreover, the Petition lacks the required statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional."

Applicants first became aware of the abandonment of the application when The Notice of Abandonment dated March 24, 2004 was received. However, a Notice of Appeal had been mailed on October 22, 2003; which was timely. The original Notice of Abandonment was erroneously sent when the application was still pending and the application had not gone abandoned.

The delay was first caused by Applicant correctly believing that the original Notice of Abandonment had been sent in error. A Petition to Withdraw the Notice of Abandonment had been timely filed and Applicants believed that this Petition was sufficient and that other action was not necessary as a timely response had been filed. Further delay was caused when the Decision on Petition of August 29, 2005 was received indicating that the filing of the Notice of Appeal did not toll the time for submission of Appellant's Brief and that the application had therefore gone abandoned on December 22, 2003 and the Petition was denied. Additional delays were caused by the confusing record resulting from the originally erroneous mailing of a Notice of Abandonment and informing and explaining to a foreign client the circumstances surrounding the petition being denied even though the original Notice of Abandonment was in error and why a further petition was needed.

Applicants assert that this renewed Petition does provide the information relating to period (2) the date that Applicant first became aware of the abandonment, which was delayed as a correct Notice of Abandonment was never sent, as well as a showing as to how the delay in discovering the abandonment occurred despite the exercise of due care or diligence on the part of the Applicants. The entire delay in filing the required reply from the due date for the reply until

U.S. Patent Application Serial No. 09/785,791
Renewed Petition Under 37 C.F.R. § 1.137(b)

the filing of an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application was unintentional. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) to revive the application was unintentional.

Applicants request that the renewed petition be granted. If a telephone interview may be helpful in this matter, please contact Applicants' Representative at 612.336.4728.

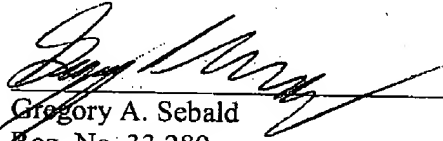


Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903
612/332-5300

Date:

3/25/08


Gregory A. Sebold
Reg. No. 33,280
GAS/km